

EROSION AND SILTATION CONTROL

CHAPTER 23 (NEW 2-23-76)

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Vienna Town Code

ARTICLE 1. IN GENERAL§ 23-1 Purpose

The purpose of this ordinance is to conserve the land, water and other natural resources of the Town of Vienna and promote the public health and welfare of the people by establishing requirements for the control of erosion and sedimentation and by establishing procedures whereby these requirements shall be administered and enforced.

§ 23-2 Definitions (Amend. 10-80; 6-89; 6-90; 6-91; 11-93)

For the purpose of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Administrator: The Director of Public Works and such duly appointed agent(s) as may be authorized by him.

Applicant: Means any person submitting an Erosion and Sediment Control Plan for approval or requesting the issuance of a permit, when required authorizing land disturbing activities to commence.

Clearing: means any activity that removes the vegetative ground cover.

Erosion and Sediment Control Plan or Plans: Means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan, inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Excavating: Means any digging, scooping or other methods of removing earth materials.

Filling: means any depositing or stockpiling of earth materials.

Grading: means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land Disturbing Activities: Means any activity which may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to,

clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

- A. such minor land disturbing activities as home gardens and individual home landscaping, repairs and maintenance work;
- B. individual service connections;
- C. installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;
- D. septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served;
- E. disturbed land areas for commercial or non-commercial uses less than two thousand five hundred (2,500) square feet in size;
- F. installation of fence and sign posts or telephone and electric poles and other kinds of posts and poles;
- G. emergency work to protect life, limb or property;
- H. exploration or drilling for oil and gas including the well site, roads and off-site disposal areas and feeder lines.
- I. tilling, planting or harvesting of agricultural, horticultural, or forest crops or livestock feedlot operation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.
- J. repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
- K. agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the dam safety act, Chapter 8.1 (§§ 62.1-115.1, et seq., of the Virginia State Code), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.
- L. surface or deep mining.

Land Disturbing Permit: means a permit issued by the Town for clearing, filling, excavating, grading or transporting, or any combination thereof.

Local Erosion and Sediment Control Program: means an outline of the various methods employed by a district or locality to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the State program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Owner: means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permittee: means the person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person: means any individual, partnership, corporation, state or instrumentality of a state or the legal representative thereof.

Plan Approving Authority: means the Town Council of the Town of Vienna or the Department of Public Works, responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of land and for approving plans.

Stabilization: for the purpose of this chapter, stabilization is defined as 90% permanent ground cover established to a height of 2" and having survived for twelve months without need of replanting or repair. The 90% shall be equally distributed over the entire project area. with no evident bare spots.

State Waters: means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Subdivision: as defined in § 17-1 of the Town Code.

Town: the Town of Vienna, Virginia.

Transportation: means any moving of earth materials from one place to another other than such movement incidental to grading when such movement results in destroying the vegetative cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result.

§ 23-3 Authority to Administer

The Director of Public Works is hereby delegated authority to administer this Chapter, and to issue supplementary rules and regulations that are in support of, and not in conflict with, the provisions of this Chapter. Said supplemental rules and regulations shall have the same force and effect as if fully set forth herein.

ARTICLE 2. STANDARDS AND REGULATIONS

§ 23-4 Erosion and Sediment Control Program

A. There is hereby adopted for the purpose of establishing standards and specifications on a variety of erosion and sedimentation control practices for use on construction sites, and similarly disturbed areas, Chapter 3 of the Virginia Erosion and Sediment Control Handbook, Third Edition - 1992 or subsequent revision thereof, as adopted by the Virginia Soil and Water Conservation Board, and Erosion and Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board effective September 13, 1990, which shall be filed and available in the office of the Town Clerk and may be viewed during the hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, inclusive except holidays, and the same is hereby adopted and incorporated as fully as if set out in length herein. (Amend. 12-77; 8-81; 6-89; 9-90; 9-91; 11-93)

B. Violations of any regulations or order of the board, any provision of this program, any condition of a permit, or any provision of this chapter shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in §23-5 shall be \$1,000.00. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000.00, except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00. (New 12/96)

§ 23-5 Regulated Land Disturbing Activities

A. Except as provided in §§ 23-4(a), 23-5(b) and 23-5(c), no person shall engage in any land disturbing activity until he has submitted to the Department of Public Works an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed and approved. Where land disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority. (Amend. 12/96)

B. Any person who owns, occupies or operates private agriculture or forest lands shall not be deemed to be in violation of this ordinance for land disturbing activities which result from the normal functioning of these lands.

C. Any State agency that undertakes a project involving a land disturbing activity.

D. Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

E. In order to prevent further erosion a local program may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

§ 23-6 Action on Erosion and Sediment Control Plans (Amend. 6-89; 6-3-91)

A. The Department of Public Works shall, within 45 days, approve any erosion and sediment control plan submitted to it if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will comply with the provisions of this ordinance. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. If no action is taken within the time specified above, the plan is deemed to be approved.

B. The approved plan may be changed in the following cases:

1. When inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies shall be made on the erosion and sediment control plan. (Amend. 6-89)

2. Where the person responsible for carrying out the approved plan finds that because of a change in circumstances, the approved plan cannot be carried out effectively and the proposed amendments to the plan are approved by the Director of Public Works.

§ 23-7 Issuance of Land Disturbing Permit

A. Except as provided in § 23-7(b), no person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the Department of Public Works.

B. Any person grading, filling or excavating on privately owned, occupied or operated agriculture or forest lands.

C. The Department of Public Works shall not issue any land disturbing or building permit for activities which involve land disturbing activities unless the applicant therefor submits with its application the approved erosion and sediment control plan and certification that such plan will be followed. Prior to issuance of any permit, the Town may also require an applicant to

submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town, to ensure that

measures could be taken by the Town at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land disturbing activity. The amount of the bond or other surety for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on the unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the estimated cost of the conservation action. If the Town of Vienna takes such conservation action upon such as failure by the permittee, the Town of Vienna may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty days of the achievement of adequate stabilization of the land disturbing activity in any project or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements of such permit. (Amend. 12/96)

§ 23-8 Monitoring, Reports, and Inspections (Amend. 6-3-91; 11-15-93)

A. The Department of Public Works shall periodically inspect the land disturbing activities to insure compliance with the approved plan, and to determine that the measures required in that plan are effective in controlling erosion. The right-of-entry to conduct such inspections shall be expressly reserved in the permit. The owner, permittee or person responsible for carrying out the plan shall be given notice of the inspection. (Amend. 11-15-93)

B. If the Department of Public Works determines that the permit holder has failed to comply with the plan, the Director of Public Works shall immediately serve upon the permit holder, by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities, a notice to comply. Such notice shall set forth specifically the measures needed to comply and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to the revocation of his permit; furthermore, he shall be deemed to be in violation of this ordinance and upon conviction shall be subject to the penalties provided by this ordinance. (Amend. 4-20-87; 11-15-93)

C. Upon receipt of a sworn complaint of a substantial violation from the Director of Public Works, the Town Manager may, in conjunction with or subsequent to a notice to comply as specified in subsection (b) above, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the

Commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in subsection (b) above. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven (7) days from the date of service pending application by the Town or permit holder for appropriate relief to the Circuit of Fairfax County. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the administrator officer or his designee may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of Fairfax County. The owner may appeal the issuance of an order to the Circuit Court of Fairfax County. Any person violating or failing, neglecting or refusing to obey an order issued by the administrator or his designee may be compelled in a proceeding instituted in the Circuit Court of Fairfax County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of corrective action, the order shall be immediately lifted. Nothing in this section shall prevent the Town Manager from taking any other action permitted by law. (New 4-20-87; 11-15-93)

D. Acceptance of performance upon completion of adequate stabilization of an approved erosion and sedimentation control plan, the permittee shall notify the Director of such completion. The Director shall then inspect the work and planting and, upon his determination that they are in compliance with the approved plan, he shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the permittee guarantee all erosion and sedimentation control work for a period of one year from the date of its preliminary acceptance, or for a period of one year from any repair or replanting ordered by the Director, or until such time that all control structures and a minimum of 90 percent of all plantings shall have survived for a year without need of further replanting or repair. During the one year period of the guarantee, the Director may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan or the guarantee. Such an order shall serve to revoke the preliminary acceptance and shall cause the permittee to renew the guarantee for an additional one year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one year, or when all control structures and a minimum of 90 percent of all plants have survived for a period of one year without need for further replanting or repair. For purposes of this section, normal cleaning of silt basins alone shall not be construed to be repair work. (New 12/96)

§ 23-9 Administrative Appeal

A. Final decisions of the Department of Public Works under this ordinance shall be subject to review by the Town Council, provided an appeal is filed with the Town Manager within thirty (30) days from the date of any written decision by the Director of Public Works which adversely affects the rights, duties or privileges of the persons engaging in or proposing to engage in land disturbing activities.

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B. All appeals must be in writing and must contain sufficient information to acquaint the Town Council with the facts involved.

§ 23-10 Penalties, Injunctions (Amend. 11/93; 12/96)

A. A violation of this ordinance shall be deemed a Class 1 Misdemeanor. (Amend. 11/93)

B. Any person who violates any regulations or order of the board, any condition of a permit, any provisions of its program, or any provisions of this chapter, shall, upon finding of an appropriate General District Court, be assessed a civil penalty in accordance with subsection B of §23-4. The Director of Public Works may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town. In any trial for a scheduled violation, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the Town of Vienna. (New 12/96)

C. The Department of Public Works may apply to the Circuit Court of Fairfax County for injunctive relief to enjoin a violation or a threatened violation of this ordinance without the necessity of showing that there does not exist an adequate remedy at law.

D. In addition to any criminal or civil penalties provided under this chapter, any person who violates any provisions of this chapter may be liable to the Town of Vienna, or the board, as appropriate in a civil action for damages. (New 12/96)

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject in the discretion of the court, to a civil action not to exceed \$2,000.00 for each violation. A civil penalty for such violation or failure may be brought by the Town of Vienna. Any civil penalties assessed by the court shall be paid to the treasury of the Town of Vienna. (New 12/96)

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the boards, or any condition of a permit or any provision of this chapter, the board, the Director, or the Town of Vienna may provide, in an order issued by the board or the Town of Vienna against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E of this section. (New 12/96)

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§ 23-11 Severability

If any provision of this ordinance is held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the remaining provisions.

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